

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA**

FRANKLIN D. ANDERSON,

Plaintiff,

v.

**Civil Action No. 2:09 CV 131
(Maxwell)**

**WARDEN JOEL ZIEGLER,
RICHARD E. WILLIAMS AND
CHAPLAIN BRIAN PRICE,**

Defendants.

ORDER

It will be recalled that the above-styled civil rights action was instituted on November 10, 2009, by *pro se* Plaintiff Franklin D. Anderson.

It will further be recalled that the case was referred to United States Magistrate Judge John S. Kaull in accordance with Rule 83.02, *et seq.*, of the Local Rules of Prisoner Litigation Procedure and 28 U.S.C. § 1915(e)(2) and 1915A.

By Order entered December 17, 2009, Magistrate Judge Kaull found that summary dismissal of the above-styled civil action was not appropriate and provided the Defendants with sixty days in which to file an Answer to the Plaintiff's Complaint. The Defendants' Motion To Dismiss Or In The Alternative For Summary Judgment was filed on March 15, 2010¹.

A Roseboro Notice entered was entered by Magistrate Judge Kaull on March 7, 2010, and advised the Plaintiff of the fact that he had twenty-eight days from the date of said Notice in which to file any opposition to the Defendants' Motion To Dismiss Or In The Alternative For Summary Judgment and to explain why the above-styled civil rights action should not be dismissed. The docket in the above-styled civil rights action reflects that no response to the

¹The Defendants sought and were granted by Order entered February 17, 2010 (Docket No. 26), permission to file a consolidated response and an extension of time in which to do so.

Defendants' Motion To Dismiss Or In The Alternative For Summary Judgment was filed by the Plaintiff.

On April 23, 2010, Magistrate Judge Kaull issued an Opinion/Report And Recommendation wherein he recommended that the Defendants' Motion To Dismiss Or In The Alternative For Summary Judgement be granted and that the Plaintiff's Complaint be dismissed with prejudice.

Magistrate Judge Kaull's Opinion/Report And Recommendation provided the parties with fourteen (14) days from the date they were served with copies of said Opinion/Report and Recommendation in which to file objections thereto and advised the parties that a failure to timely file objections would result in the waiver of their right to appeal from a judgment of this Court based upon said Opinion/Report And Recommendation.

The Court's review of the docket in the above-styled action has revealed that no objections to Magistrate Judge Kaull's April 23, 2010, Opinion/Report And Recommendation have been filed and that this matter is now ripe for review. A May 3, 2010, docket entry in the above-styled civil action reveals that service of the Plaintiff's copy of the Opinion/Report And Recommendation was accepted on April 28, 2010.

Pursuant to 28 U.S.C. § 636(b)(1)(c), this Court is required to make a *de novo* review of those portions of the Magistrate Judge's findings to which objection is made. The Court is not, however, required to review, under a *de novo* or any other standard, the factual or legal conclusions of the Magistrate Judge as to those portions of the findings or recommendation to which no objections are addressed. Thomas v. Arn, 474 U.S. 140, 150 (1985). In addition, failure to file timely objections constitutes a waiver of *de novo* review and the Plaintiff's right to appeal this Court's Order. 28 U.S.C. § 636(b)(1); Snyder v. Ridenour, 889 F.2d 1363, 1366 (4th Cir 1989); United States v. Schronce, 727 F.2d 91, 94 (4th Cir. 1984).

Upon consideration of Magistrate Judge Kaull's March 23, 2010, Opinion/Report and

Recommendation, and having received no written objections thereto, it is

ORDERED that the Opinion/Report And Recommendation entered by United States Magistrate Judge John S. Kaull on April 23, 2010 (Docket No. 33), be, and the same is hereby, **ACCEPTED** in whole and the Court hereby incorporates the findings of fact and conclusions of law made by Magistrate Judge Kaull in said Opinion/Report And Recommendation. It is further

ORDERED that the Defendants' Motion To Dismiss Or In The Alternative For Summary Judgment (Docket No. 29) be, and the same is hereby, **GRANTED**. It is further

ORDERED that the Plaintiff's Complaint (Docket No. 1) be, and the same is hereby, **DISMISSED with prejudice**. It is further

ORDERED that the Clerk of Court shall enter judgment for the Defendants. It is further

ORDERED that, should the Plaintiff desire to appeal the decision of this Court, written notice of appeal must be received by the Clerk of this Court within sixty (60) days from the date of the entry of the Judgment Order, pursuant to Rule 4 of the Federal Rules of Appellate Procedure. The \$5.00 filing fee for the notice of appeal and the \$450.00 docketing fee should also be submitted with the notice of appeal. In the alternative, at the time the notice of appeal is submitted, the Plaintiff may, in accordance with the provisions of Rule 24(a) of the Federal Rules of Appellate Procedure, seek leave to proceed *in forma pauperis* from the United States Court of Appeals for the Fourth Circuit.

ENTER: June 7, 2010

/S/ Robert E. Maxwell
United States District Judge